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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(I) CWP-24787-2023
Reserved on: 23.11.2023
Date of decision: 07.12.2023

PRANAV GUPTA

...Petitioner

Versus

UNION OF INDIA AND ANOTHER

...Respondents

(II) CWP-25048-2023

VINEET GUPTA

...Petitioner

Versus

UNION OF INDIA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. R.S. Rai, Sr. Advocate, with
Mr. Anand Chibbar, Sr. Advocate, with
Mr. Surjeet Bhadu, Advocate,
Ms. Rubina Vermani, Advocate,
Mr. Shikar Sarin, Advocate,
Ms. Sanya Thakur, Advocate,
Mr. Veer Singh, Advocate,
Ms. Srishti Verma, Advocate
Mr. Agam Bansal, Advocate,
for the petitioner (in CWP-24787-2023).

Mr. Puneet Bali, Sr. Advocate, with
Mr. Vipul Joshi, Advocate,
Mr. Surjeet Bhadu, Advocate,
Mr. Veer Singh, Advocate,
Mr. Sanya Thakur, Advocate,
Mr. Prashant Kapila, Advocate,
Ms. Srishti Verma, Advocate,
Mr. Agam Bansal, Advocate,
for the petitioner (in CWP-25048-2023).

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Mr. S. V. Raju, Addl. Solicitor General of India, with
Mr. Arvind Moudgil, Senior Counsel for Union of India and
Mr. Zoheb Hussain, Special Counsel for ED
Mr. Samrat Goswami, Advocate,
Ms. Deepanshu Gupta, Advocate,
Mr. Vivek Gurnani, Advocate,
Mr. Kartik Saherwal, Advocate,
Mr. Madhumita Keshvan, Advocate,
Ms. Manisha Dubey, Advocate,
Ms. Jyotika Panesar, Advocate,
Ms. Nisha Rawat, Advocate, and
Ms. Bhawna Gandhi, Advocate, Legal Consultant for ED
for respondents No.1 and 2.

Mr. Pankaj Bhatnagar, IO/A.D. and
Ms. Ritika Mehra, LC for ED

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SURESHWAR THAKUR, J.

1. Since both the writ petitions arise from a common FIR, besides when in both the writ petitions a challenge is made to the remand orders made by the learned trial Judge concerned. Moreover, when in both the writ petitions a common relief is espoused qua the petitioners becoming released from judicial custody, therefore, both the writ petitions are amenable for becoming decided through a common verdict.

2. The petitioners became arrested and also became remanded to judicial custody through an order made on 28.10.2023, by the Remandee Court concerned. Therefore, it has to be determined whether the arrest of the petitioners was terms of the relevant provisions embodied in Sections 17-A, 18(1), and, in Section 19(1) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “the Act of 2002”).

3. In the above regard, it is necessary to hereinafter extract the provisions (supra), which do become extracted hereinafter.

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*"**17. Search and seizure**.-- (1) xxx*

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;"

***"18. Search of persons**.-- (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act."*

***"19. Power to arrest**.-- (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest."*

4. Be that as it may, the larger legal questions which arise for adjudication being made thereons, are as under:-

i) Whether the formal arrest of the petitioners, as became made, on 28.10.2023, and, when on such date the grounds or reasons to believe, thus for the accused becoming arrested, rather became supplied to them, is to be taken to be the relevant date.

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ii) Moreover, if the said date is taken to be the date of the accused becoming actually arrested, through a formal arrest memo becoming drawn, and, when the apposite compliance thus in the above manner, was made to the above extracted statutory provisions, whether yet the restraint, as made, upon the present petitioners, as emerging from theirs, being respectively lodged, into the apposite seized car, and/or, in the vehicle of the Enforcement Directorate, rather tantamounts, to theirs being thus actually arrested then i.e. on 27.10.2023. Moreover, as such it has to be determined, whether the said manner of restraint being caused, upon the petitioners, on 27.10.2023, thus thereby makes the said restraint to be construable to theirs being then arrested. In addition, if on the said date no grounds for theirs becoming arrested or the reasons for theirs becoming arrested, became supplied to them, thus whether in terms, of the verdict recorded by the Hon'ble Apex Court in ***Criminal Appeal Nos.3051-52 of 2023*** titled as "***Pankaj Bansal Versus Union of Indian and others***", thus any pervasive breach became hence caused to the mandatory statutory provisions (supra). Moreover, whether the restraint or arrest as became encumbered, upon the accused on 27.10.2023, is liable to be pronounced to be completely non est or illegal. Resultantly, whether the challenged orders of remand are to be declared to be perfunctory and mechanically made, besides whether

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the petitioners are entitled to theirs being released from judicial custody.

5. In rendering an answer to the above, the learned Senior counsels appearing for the respective petitioners have made the hereinafter submissions:

a) That in view of the above manner of restraint being caused upon the petitioners on 27.10.2023, thereby irrespective of theirs becoming formally arrested on 28.10.2023, through the drawing of arrest memo, does yet constitute theirs being rather arrested on 27.10.2023. Since on 27.10.2023 no grounds of arrest become supplied to them, therefore it is argued that thereby breach is caused to the statutory provisions (supra).

b) In making the above submissions, the learned Senior counsels for the petitioners make reliance, upon, a judgment rendered by the Hon'ble Bombay High Court in case titled as "***Ashak Hussain Allah Detha alias Siddique & Another V. Assistant Collector of Customs (P.), Bombay & Another***", whereins, it has been expostulated, that a person's arrest shall be deemed to have commenced immediately upon his becoming placed under restraint, and/or, when his freedom is jeopardized.

c) The above propounded view is supported by a judgment of a Division Bench of the Hon'ble Karnataka High Court, rendered in case titled as "***Kultej Singh V. Circle Inspector of Police & Others***". Moreover, the said

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view is also supported by a judgment made by the Hon'ble Andhra Pradesh High Court in case titled as "***Mrs. Iqbal Kaur Kwatra V. The Director General of Police, Rajasthan State, Jaipur & Others***".

d) They have further proceeded to make an argument that since in the wake of a pronouncement, as, made by the Hon'ble Apex Court, in case titled as "***Pankaj Bansal's case*** (supra), besides in the light of the expostulation of law, as, made by the Hon'ble Apex Court in case titled as "***Roop Bansal V. Union of India & Another***" reported in ***Law Finder DOC ID: 2363538***, thus with candid speakings therein, that when there is blatant breach caused to the mandatory provisions (supra). Resultantly, the said arrest can be declared to be illegal by the Writ Court, and, the arrestees becoming entitled to become released from judicial custody.

6. **Submissions of the learned Addl. Solicitor General of India are as under**:

a) The learned Addl. Solicitor General of India while countering the above made submissions, addressed before this Court by the learned Senior counsels, for the respective petitioners, has emphasized upon paragraph No.46, of the verdict, drawn by Hon'ble Apex Court in case titled as "***Directorate of Enforcement V. Deepak Mahajan, (1994) 3 SCC 440 (1)***", paragraph whereof becomes extracted hereinabove, thus to submit that when the petitioners, were

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issued summons, on 27.10.2023, and, that when in pursuance to the said made summons, they were lodged in the respective vehicles (supra). Therefore, they were not arrested on 27.10.2023 but were then merely detained for their interrogation being made at the headquarters of E.D. at Delhi. In consequence, he submits that when then rather no restraint became encumbered, upon the present petitioners, therefore he submits, that the date of the making of the formal arrest, of the present petitioners, through an arrest memo becoming drawn on 28.10.2023, rather becomes the relevant date, especially for making an adjudication, whether on the said date, there were any breach caused to the mandatory provisions (supra).

b) He further submits, that when as such, on the said date of the accused becoming formally arrested i.e. on 28.10.2023, both of them became supplied with the memo of arrest, and, also reasons to believe, that they had committed the offences embodied in the Act of 2002. Therefore, he submits that there is no flagrant breach caused to the mandatory provisions (supra), nor the petitioners are entitled to any relief becoming accorded to them.

> *“46. The word 'arrest' is derived from the French word 'Arreter' meaning "to stop or stay" and signifies a restraint of the person. Lexicologically, the meaning of the word 'arrest' is given in various dictionaries depending upon the circumstances in which the said expression is used. One of us, (S. Ratnavel Pandian,*

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J. as he then was being the Judge of the High Court of Madras) in Roshan Beevi v. Joint Secretary, Government of T.N.17 had an occasion to go into the gamut of the meaning of the word 'arrest' with reference to various textbooks and dictionaries, the New Encyclopaedia Britannica, Halsbury's Laws of England, A Dictionary of Law by L.B. Curzon, Black's Law Dictionary and Words and Phrases. On the basis of the meaning given in those text book sand lexicons, it has been held that:

> *"[T]he word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases When used in the legal sense in the procedure connected with criminal offences, an arrest consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested."*

c) The learned Addl. Solicitor General of India, in supporting the above submission, has referred to paragraph 4 of the affidavit sworn by one, Mr. Phool Chand, engaged as a driver with the family of Pranav Gupta, paragraph whereof becomes extracted hereinafter, whereins, in the last sentence thereof, thus speakings occur, but revealing that the

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officials had coaxed Pranav Gupta to accompany them immediately. Therefore, the learned ASG contends, that the accused concerned, had willingly accompanied the officials of the ED in their car or in the seized car concerned. Resultantly, there was no restraint nor any actual arrest of the petitioners, on the said date nor there was any occasion for the accused being on the said date rather becoming supplied with the grounds of arrest or the reasons to believe nor thereby there was any breach caused to the mandatory statutory provisions (supra).

> *"4. At around 07:15 PM, I saw that the said Officials insisted that Mr. Pranav Gupta accompanies them to an undisclosed location in his BMW Car bearing Registration Number: CH 0004. Mr. Pranav Gupta asked the said Officials for any Summons that may be issued to him for his appearance at any Office of the Enforcement Directorate on the said day, i.e. on 27.10.2023. Mr. Pranav Gupta also said that he will come on his own to their Office on the date and at the time that may be mentioned on such Summons. However, the Officials coaxed Mr. Pranav Gupta to accompany them immediately."*

d) That since prior thereto summons, on the same date became issued upon the accused, therefore, he forcefully contends that the said accompanyings of the accused concerned, respectively in vehicle(s), which were either seized or owned by the E.D., were only meant for the purpose of interrogation, and, was not construable to be

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causing their arrest. Contrarily, rather the import thereof, is that, the accused were in pursuance thereto taken to the E.D. headquarters for theirs becoming interrogated there. Therefore, he argues that the date of the accused being formally arrested through an arrest memo of 28.10.2023 becomes the relevant date, for adjudging whether then any breach was caused to the mandatory provisions (supra). He emphasizes that when on the said date, they were supplied the grounds of arrest or the reasons to belief, that they have committed the offences (supra). Resultantly, he forcefully argues that no blatant departure was made vis-a-vis the mandatory statutory provisions (supra). The above made contention is also supported by written submissions placed before this Court by the learned ASG concerned.

7. **Analysis of the submissions addressed (supra), before this Court, and, the reasons for rejecting the arguments of the learned ASG, and, accepting the arguments addressed before this Court by the learned Senior counsels for the respective petitioners.**

8. The above made respective arguments before this Court by the learned counsels concerned, have been studiedly evaluated by this Court.

9. On a studied analysis being made of the said arguments, it appears, that the learned ASG concerned, has visibly over focused upon drawing a semantic distinction inter-se arrest and custody, thus through his making reliance upon the judgments (supra).

10. Moreover, he has also emphasized, that the above manner of accompanyings of the accused in the respective vehicles, which were

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respectively seized, and/or, belonged to the E.D. officials concerned, were only in pursuance to the summons, as became issued upon them. In addition, though he has attempted to thereby make a submission, that the said purported restraint, was not arrest, rather the date of drawing of the formal arrest memo, is the reckonable date rather for all the relevant purpose(s).

11. Nonetheless, the above submissions addressed before this Court, as becomes, hinged upon the above material placed before this Court by the learned ASG concerned, rather are not amenable for becoming accepted by this Court.

12. The reason for making the above conclusion, spurs from the judgment (supra), as cited before this Court by the learned Senior counsels wherein, it has been most candidly expressed, that the date of causing unlawful restraint, upon the petitioners, is the reckonable date, than the date of makings of the formal actual arrest of the accused, thus through the drawings of arrest memo(s).

13. Now applying the mandate of the verdicts (supra), to the facts at hand, it has but clearly emerged rather from the evident fact, qua the accused, thus respectively accompanying the officials of the E.D., on 27.10.2023, respectively in the seized car or in the car belonging to them. Therefore, the said manner of the accused accompanying the E.D. officials, does tantamount to theirs being then unlawfully restrained, and, as such, the accompanying of the accused in the said vehicles, thus on 27.10.2023 but also becomes the actual date of theirs being, thus arrested then. However, when on the said date the accused were not supplied with the grounds of arrest or the reasons to believe, that they have committed

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offences punishable under the Act of 2002. Consequently, thereby pervasive breach is caused to the mandatory provisions (supra).

14. The argument, if any, as addressed before this Court by the learned ASG concerned, that the said accompanying of the accused in the vehicles (supra), was only in pursuance to summons, becoming issued upon them, for ensuring that thereby, they are interrogated at the E.D. headquarters located at Delhi, is but also liable to be rejected.

15. The reasons for rejecting the above argument, but is again planked, upon the trite evident fact, that unless the accused had willingly accompanied the E.D. officials concerned, thus in their private vehicles or in the vehicle of their relatives, thereupon theirs in the above mode of theirs accompanying the E.D. officials to the E.D. headquarters, located at Delhi, would be construed to be theirs thereby then, thus becoming unlawfully restrained. However, when the material in the above regard is grossly amiss, rather material emerges, that the accused had accompanied, the E.D. officials, on 27.10.2023, thus in the respectively seized vehicle or in the vehicles belonging to the E.D. officials. Therefore, the said mode of the accused accompanying the E.D. officials, thus cannot be construed to be theirs either voluntarily or willingly accompanying them, to the E.D. headquarters, nor thereby the said manner of accompanyings of the accused with the E.D. officials, can be termed to be in pursuance to theirs becoming summoned, thus for their interrogation being made, at the E.D. headquarters located at Delhi. It appears that in the garb of the summons of 27.10.2023, the E.D. officials has attempted to give the otherwise unlawful restraint, thus the

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untenable colour of the accused voluntarily accompanying, the E.D. officials to the E.D. headquarters, located at Delhi.

16. Even otherwise, the affidavit (supra) as becomes relied, upon by the learned ASG concerned, is insignificant, to secure the above submission, as the last sentence of the above extracted paragraph 4, does amplify, that the E.D. officials rather had coaxed the accused, to accompany them. Therefore, the meaning to be imparted to the word 'coaxed' is that, there was some allurement purveyed to the accused by the E.D. officials to accompany them, in the respective vehicles, which were either respectively seized, and/or, belonged to them. Consequently, thereby the learned ASG, concedes that the accused were allured to accompany the E.D. headquarters at Delhi, besides also concedes that the said accompanyings of the accused with the E.D. officials, on 27.10.2023, rather was not in pursuance to any purported summons, as became issued by them, which otherwise is colourably issued merely to cover up, the unlawful restraint, thus in the mode (supra), rather becoming encumbered upon, the petitioners.

17. Though, learned ASG concerned, has emphasized upon the factum, that since the learned Magistrate concerned, has made orders of remand vis-a-vis the accused, therefore the said orders of remand are construable to be condoning the above lapses.

18. However, the above argument, cannot become accepted by this Court, in view of the mandate recorded by the Hon'ble Apex Court in case titled as "***V. Senthil Balaji V. State Represented by Deputy Dikrector and Others***" reported in ***2023 SCC Online SC 934***, wherein, it has been expostulated, that when material, does emerge rather suggestive

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that the parameters laid thereins, relating to application of judicial mind by the learned trial Judge concerned, to the makings of the relevant statutory breaches but become infringed, thus in his making the impugned order of remand, as such, upon, the vice of non-application of mind rather emerging, thus planked, upon breach being caused to the mandate of Section 19 of the Act of 2002, thereby the orders of remand are illegal.

19. In consequence, it has been also propounded therein, that thereby for the above vices ingraining the orders of remand, thereby the said impugned orders of remand can be quashed, and, set aside, rather than theirs being construed to be condoning, the above deep and pervasive mandatory statutory lapses, as became made by the officials of the E.D.

20. In view of the above, this Court quashes the order of remand, and, in the exercise of writ jurisdiction, in terms of the verdicts pronounced in ***Pankaj Bansal's case*** (supra), and, in ***Roop Bansal's case*** (supra), declares the arrest of the petitioners to be non-est and void.

21. In consequence, after allowing the instant petitions, this Court quashes the impugned order of remand (Annexure P-1 in both petitions), and, orders that the petitioners be released from judicial custody, but subject to theirs furnishing personal, and, surety bonds in the sum of Rs.5,00,000/- each, before the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned, and, to his satisfaction, and, also subject to theirs not tampering with prosecution evidence, and, also theirs not influencing prosecution witnesses. Moreover, the petitioners shall also surrender their respective passports before the

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learned trial Court concerned, and, shall also give an undertaking before the learned trial Judge concerned, on the subsequent date of hearing, assigned by the learned trial Judge concerned, that they shall not leave India without the prior permission of the learned trial Judge concerned.

(SURESHWAR THAKUR)
JUDGE

7.12.2023 **(SUDEEPTI SHARMA)**
Ithlesh **JUDGE**

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No

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